

ADDRESS REPLY TO  
"THE ATTORNEY GENERAL OF HAWAII"  
AND REFER TO  
INITIALS AND NUMBER

RRT:ai



CABLE ADDRESS:  
ATTGEN

GEORGE PAI  
ATTORNEY GENERAL

STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE CAPITOL  
4TH FLOOR  
HONOLULU, HAWAII 96813

July 23, 1974

Environmental Protection Agency  
100 California Street  
San Francisco, California 94111

ATTN  
DAVE MOWDAY, ATTORNEY FOR

Gentlemen:

Enclosed is a draft letter for your  
review and consideration.

Very truly yours,

A handwritten signature in cursive script, reading "Robert R. Taylor".

Robert R. Taylor  
Deputy Attorney General

Enc.

Re: NPDES Program in Hawaii

Gentlemen:

As Deputy Attorney General assigned to advise the State on environmental matters, I have been requested to give my opinion on the applicability of Hawaii's variance provisions to State issued and administered NPDES permits.

It is my opinion that the variance provisions of section 342-7, H.R.S., were not meant to apply to State-issued NPDES permits.

As you know, the State amended its statutes relating to water pollution so that it would have the necessary statutory basis to administer the NPDES program. State and Environmental Protection Agency personnel scrutinized this legislation to assure that Federal guidelines would be complied with and the NPDES primary administration transferred to the State. A copy of Standing Committee Report Number 616 submitted by the State Legislative Committee on Environmental Protection reflects this fact and is attached to my letter.

---

Thus, by the 1973 amendment to Chapter 342, there is a clear legislative intent to apply and qualify for the

---

NPDES Program. It is, therefore, reasonably implied that a variance would not be applicable to NPDES permits.

Further, the variance provision was in effect even before Chapter 342 was in effect. The wording of section 342-22(2), H.R.S., indicates that a permit will be issued for air emissions only if the operation involved will be in compliance with existing State rules and regulations. Thus, the only relief to the operator in the case of air pollution is to seek a variance. The statutes involving water pollution, sections 342-21 - -23, however, are grossly distinguishable and are clearly drafted along the lines of Public Law 92-500. These statutes are designed to identify and abate sources of water pollution through the permit system. Therefore, the variance procedure is simply not applicable to water pollution and NPDES permits and to the extent that the variance procedure conflicts, it is impliedly superseded by the NPDES permit system.

I hope the above discussion has clarified any ambiguity on the subject. It would certainly be a shame to lose the NPDES Program, especially in light of all the work on the Federal and local level that went into drafting the 1973 amendments to Chapter 342.

Very truly yours,

Robert R. Taylor  
Deputy Attorney General

INSERT

...section 342-7, H.R.S., based on legislative intent and the history of Hawaii NPDES legislation, does not apply to NPDES permits; and, additionally, that to the extent section 342-7 confers any rights on dischargers in Hawaii that are in any way inconsistent with the requirements of the Federal Water Pollution Control Act and regulations or guidelines issued pursuant thereto, it is superseded by the Hawaii NPDES legislation.